

STATE OF MICHIGAN
COURT OF APPEALS

CONSTANCE JACKSON-RUFFIN,

Plaintiff-Appellee,

v

METRO CARS, INC.,

Defendant-Appellant.

UNPUBLISHED

May 22, 2008

No. 276144

Wayne Circuit Court

LC No. 05-504665-NI

Before: Zahra, P.J., and Whitbeck and Beckering, JJ.

ZAHRA, P.J., (*dissenting*).

I respectfully dissent. I conclude that plaintiff failed to demonstrate that she suffered a serious impairment of a body function as described in *Kriener v Fischer*, 471 Mich 109, 129; 683 NW2d 611 (2004), such that she would be entitled to maintain a cause of action for non-economic damages under the Michigan No-Fault Act, MCL 500.3135. I would reverse the judgment for the plaintiff and order judgment notwithstanding the verdict for the defendant.

I agree with the legal standard adopted by the majority for determining whether an injury constitutes a serious impairment of a body function. As noted by the majority,

In order to maintain a cause of action for non-economic damages arising out of an individual's ownership, use, or maintenance of a motor vehicle, a plaintiff must demonstrate that she "suffered death, serious impairment of body function, or permanent serious disfigurement." *Kreiner*[, *supra*]; MCL 500.3135(1). At issue here is whether plaintiff suffered a serious impairment of body function, which is defined as "an objectively manifested impairment of an important body function that affects the person's general ability to lead his or her normal life." MCL 500.3135(7). On appeal, the parties do not dispute that plaintiff suffered an objectively manifested impairment of an important body function, but rather, whether her injury has affected her general ability to lead her normal life.

As indicated in *Kreiner*, in determining whether an injury has affected a plaintiff's general ability to lead her normal life, "a court should engage in a multifaceted inquiry, comparing the plaintiff's life before and after the accident as well as the significance of any affected aspects on the course of the plaintiff's overall life." *Kreiner, supra* at 132-133. In conducting the analysis, the court

should consider, among other factors: “(a) the nature and extent of the impairment, (b) the type and length of treatment required, (c) the duration of the impairment, (d) the extent of any residual impairment, and (e) the prognosis for eventual recovery.” *Id.* at 133. The above list is not exhaustive, nor should any of the individual factors be considered to be dispositive of the issue. *Id.* at 133-134. The *Kreiner* Court further explained that, “[a]lthough some aspects of a plaintiff’s entire normal life may be interrupted by the impairment, if, despite those impingements, the course or trajectory of the plaintiff’s normal life has not been affected, then the plaintiff’s ‘general ability’ to lead [her] normal life has not been affected.” *Id.* at 131.

My disagreement with the majority stems from their application of the law to the facts presented in this case. The majority bases its opinion on plaintiff’s claims of residual impairments. Plaintiff objectively manifests some residual post-traumatic arthritis to her left ankle and a mild inward turning of her left foot. Plaintiff also asserts she lives with pain in her left heel and ankle on a daily basis. However, *Kreiner* does not base a finding of a “serious impairment” on subjective complaints of pain. Rather, *Kreiner* focuses on the function of the body and how physician imposed restrictions impact one’s ability to lead a normal life.

Plaintiff and the majority conclude her objectively manifested residual injuries preclude plaintiff from continuing as a court clerk, the career of her choice. However, the record clearly establishes that plaintiff’s retirement from the court was not advised or directed by any of her treating physicians. Rather, plaintiff’s decision to retire was made unilaterally, only days after returning to work subsequent to her initial recuperation period. Significantly, Dr. Milton Green, plaintiff’s treating physician, opined that nothing prevented plaintiff from working as a court clerk. The validity of Dr. Green’s opinion is established just a few months after plaintiff’s retirement from the court system, when plaintiff began working as a greeter at a Meijer store and often, but not always, worked 40-hours a week. The Meijer position required plaintiff to stand for prolonged periods of time and was far less sedentary than plaintiff’s position as a court clerk.

No physician imposed restrictions on other areas of plaintiff’s life. While plaintiff claims difficulty with many recreational activities, like running and taking long walks, such impairments are insufficient as a matter of law to affect the course or trajectory of the plaintiff’s normal life. Accordingly, “plaintiff’s ‘general ability’ to lead [her] normal life has not been affected.” *Kreiner* at 131. Finally, while plaintiff claims difficulty relating to the performance of daily household activities, it is dispositive, in my opinion, that all of plaintiff’s restrictions in this regard are self-imposed.

I would conclude as a matter of law that plaintiff failed to establish a cause of action for non-economic damages under the Michigan No-Fault Act, MCL 500.3135.

/s/ Brian K. Zahra